

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

May 12, 2011

In the Matter of WASHINGTON, Minors.

No. 299907

Wayne Circuit Court

Family Division

LC No. 10-492262

Before: SAAD, P.J., and JANSEN and K. F. KELLY, JJ.

PER CURIAM.

Respondent appeals as of right from an order terminating his parental rights to the three children under MCL 712A.19b(3)(b)(i), (b)(ii),¹ (g), (j), (k)(iii), and (k)(v). We affirm.

I. MEDICAL EXPERT

Respondent first argues that the trial court erred when it denied his motion for the appointment of a medical expert under MRE 706. We disagree. We review a trial court's decision whether to appoint a medical expert for an abuse of discretion. *In re Bell*, 138 Mich App 184, 187-188; 360 NW2d 868 (1984).

MRE 706(a) provides that “[t]he court may on its own motion or on the motion of any party enter an order to show cause why expert witnesses should not be appointed, and may request the parties to submit nominations.” Although respondent generally asserts that he did not injure his children, he makes no allegation that the opinion of petitioner's expert, Dr. Hartwig, was somehow invalid, does not allege that Dr. Hartwig was biased against him, and does not assert a belief that other medical experts would testify in his favor. See *Bell*, 138 Mich at 187-188. Because respondent has not shown that he was legally entitled to the appointment of a medical expert, we find no abuse of discretion in the trial court's denial of his motion.

¹ On appeal, petitioner concedes that termination of respondent's parental rights under MCL 712A.19b(3)(b)(ii) was in error. However, given the evidence establishing the other statutory grounds, the error was harmless.

II. FINDINGS OF FACT

Respondent next argues that the trial court erred in finding that he caused the children's injuries and there was a reasonable likelihood that the children would be harmed if returned to the home. We disagree. To terminate parental rights, the trial court must first find that at least one of the statutory grounds set forth in MCL 712A.19b(3) was proven by clear and convincing evidence. *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review the court's findings of fact for clear error. MCR 3.977(K). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

The trial court's findings that respondent abused the children were supported by clear and convincing evidence. There was evidence that respondent was the caregiver for the children during the day while their mother worked and that respondent was home alone with the children when one of the two-month-old twins became unresponsive. The child arrived at the hospital with a severe head injury, a bleed within the brain, retinal hemorrhages, and minor bruising to the chin and the tongue area. Dr. Hartwig testified that, because there was no indication that the child suffered an acute head trauma, her injuries were consistent with "shaken baby syndrome." Dr. Hartwig further testified that the child's brain injuries could not have been related to any remote trauma suffered by a fall down the stairs a few weeks earlier.

In addition, there was evidence that the other twin was found to have multiple healing rib fractures as well as evidence of tibial and femur fractures. Dr. Hartwig testified that the rib fractures were "highly suggestive of abuse," given that there was no history of trauma to the child, and that the tibia and femur fractures were "quite specific for abuse" because they required a pulling on the bone. Dr. Hartwig, who was qualified as an expert in child abuse, opined that both children's injuries were the result of abuse. On the basis of this evidence, we find no clear error in the court's finding that respondent caused the children's injuries and that there is a reasonable likelihood of injury in the foreseeable future.

III. BEST INTERESTS DETERMINATION

Finally, respondent argues that the trial court erred in finding that termination was in the children's best interests. We disagree. Once a statutory ground for termination of parental rights is established, the court must terminate if it finds that termination of parental rights is in the child's best interests. MCL 712A.19b(5). This Court reviews a trial court's findings regarding a child's best interests for clear error. *In re Trejo*, 462 Mich at 357-357.

There was evidence that respondent physically abused both of the infant twins, and that the abuse of one of the twins resulted in severe and permanent injuries. There was other evidence that respondent committed domestic violence against the children's mother, including choking her in front of the oldest child while she was pregnant with the twins. In addition, the caseworker expressed her belief that termination was in the children's best interests because they

needed stability and time to heal from their injuries. On the basis of this evidence, we find no clear error in the court's finding that termination was in the children's best interests.

Affirmed.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Kirsten Frank Kelly